

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5164 of 1992

Date of decision: 20-10-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PANCHAL ASHOKKUMAR SOAMABHAI

Versus

PHG SISODIA TECHNICAL INSTITUTE

Appearance:

MR YN OZA for Petitioner

MR RN SHAH for Respondent No. 1

Ms. Siddhi Talati for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/10/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner was appointed by respondent No.1 on the post of Draughtsman (Civil) Instructor by order dated 27-1-1987. The parties are not at variance that the respondent institution is receiving 100 per cent grant in aid from the Government.

2. Due to reduction in the number of students, the post which the petitioner was holding in the institution was abolished as per the staffing pattern, and under the impugned order dated 24-4--1992 his service came to be terminated.

3. This court while admitting this petition on 31-7-1992 protected the petitioner by granting interim relief, and the parties are not at variance that till date the interim relief continues in favour of the petitioner.

4. Learned counsel for the petitioner, challenging the validity of the order of termination of services of the petitioner, made three fold contentions. First contention raised is that the petitioner was a permanent employee of respondents No.1 and before terminating his services the provisions as contained in Article 311 of the Constitution of India were to be complied with, which has not been done, and as such the order is void ab initio. It has next been contended that prior to termination of services of the petitioner respondent No.1 has not taken approval from the Director of Employment and Training, Gujarat State. Last contention is raised that in other institutions the post of Draughtsman (Civil) Instructor is vacant and as such the petitioner should have been absorbed therein.

5. On the other hand learned counsel for the respondents contended that the provisions of Article 311 of the Constitution of India are not attracted in the present case as the petitioner is not holding any civil post. In reply to the second contention the learned counsel for the respondents submitted that a general order has been issued by the Director that where there is any shortfall in the requisite number of students in any trade, then services of the employees to the extent it is surplus should be terminated. In view of this fact permission of the Director for terminating the services

of the petitioner was not required to be taken. So far as the last contention is concerned, the counsel for the respondents contended that other institutions, even if there is vacancy available, may or may not accept the petitioner, and the respondent No.2 is not in a position to compel that institution to absorb the petitioner.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. I do not consider it necessary to decide the first two contentions raised by the learned counsel for the petitioner in this special civil application, as I consider that the third contention raised by the learned counsel for the petitioner deserves acceptance.

7. It is not in dispute that the petitioner worked for all these years in respondent No.1 institution, and he was appointed on the post of Draughtsman (Civil) Instructor after he was selected in the open selection. It is also not in dispute that private I.T.Is. are getting 100 per cent grant in aid from the Government. The counsel for the petitioner submits that the petitioner is willing to go anywhere if is absorbed in another institution. In view of these facts it is certainly within the competence of the respondent No.3 to direct absorption of the petitioner in an institution where the post in question is vacant. The institution has no say in the matter as it is receiving 100 per cent grant in aid from the Government. Respondent No.2 has all the prerogative to send an employee who has been declared surplus from one institution to another institution which is receiving grant-in-aid. In view of this position I consider it proper to dispose of this special civil application with the direction to the respondent No.2 that the case of the petitioner for absorption on the post of Draughtsman (civil) Instructor in another institution where post is lying vacant shall be considered within a period of three months from the date of receipt of copy of this order, and appropriate order be passed. In case the petitioner cannot be absorbed in another institution, respondent No.2 shall pass a reasoned order and copy of the same may be sent to the petitioner by registered post A.D. In that case liberty is granted to the petitioner for revival of this special civil application. Till the matter of absorption of the petitioner in another institution is decided, the interim relief granted by this Court shall continue to operate. Subject to the aforesaid direction, petition stands disposed of. Rule discharged. No order as to costs.

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CSM